

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL SIMS,

Petitioner,

No. 07-CV-14016-DT

vs.

Hon. Gerald E. Rosen

BLAINE C. LAFLER,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION AND
DISMISSING PLAINTIFF'S HABEAS CORPUS ACTION

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on September 29, 2009

PRESENT: Honorable Gerald E. Rosen
Chief Judge, United States District Court

This matter having come before the Court on the September 9, 2009 Report and Recommendation of United States Magistrate Judge Mona K. Majzoubv recommending that the Court deny Plaintiff's petition for a writ of habeas corpus and that this case, accordingly, be dismissed; and no timely objections to the Magistrate Judge's Report and Recommendation having been filed; and the Court having reviewed the Magistrate Judge's Report and Recommendation and the Court's file of this action and having concluded that, for the reasons stated in the Report and Recommendation, Plaintiff's petition for habeas corpus relief should be denied; and the Court being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's Report

and Recommendation of September 9, 2009 [**Dkt. # 13**] be, and hereby is, adopted by this Court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Magistrate Judge's Report and Recommendation, Plaintiff's petition for habeas corpus relief **Dkt. # 1**] be, and hereby is **DENIED** and the above-captioned case, therefore, is **DISMISSED**.

Before Petitioner may appeal this Court's dispositive decision, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). When a district court rejects a habeas claim on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a district court denies a habeas claim on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

For the reasons stated in the Magistrate Judge's Report and Recommendation, the Court will deny petitioner a certificate of appealability because he has failed to make a substantial showing of the denial of a federal constitutional right. *Millender v. Adams*, 187 F. Supp. 2d 852, 880 (E.D. Mich. 2002). The Court will also deny petitioner leave to appeal

in forma pauperis, because the appeal would be frivolous. *See Allen v. Stovall*, 156 F. Supp. 2d 791, 798 (E.D. Mich. 2001); See Fed. R. App. P. 24(a). Accordingly,

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that leave to appeal *in forma pauperis* is **DENIED**.

s/Gerald E. Rosen
Chief Judge, United States District Court

Dated: September 29, 2009

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Raina I. Korbakis, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants:

Paul Sims, #255260, Chippewa Correctional Facility, 4269 W M-80, Kincheloe, MI 49784.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(313) 234-5137